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No. 84-9

In The
Supreme Court of the United States
October Term, 1983

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, and CECILIA STEVENSON,
Petitioners,

vs.

DORIS RUSSELL,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICI CURIAE PIPE TRUST, IBEW-NECA TRUST, AIRCONDITIONING TRUST, AND FLOOR COVERING TRUST IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

Cases

Table of Authorities Cited

Cases

Table of Authorities Cited

Cases

Miscellaneous

Rules

Table of Authorities Cited

Regulations

Statutes

Table of Authorities Cited

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INTEREST OF AMICI CURIAE

It is, undoubtedly, common practice for litigants to sound alarums before this Court in hope of persuading the Court that their cause, among all other causes, is worthy of the Court's attention. We refuse to dissemble this Court by urging that lives may hang in the balance upon the instant cause, or that it rises to the level of

eliciting some grave constitutional pronouncement. At the same time, and at the risk of being classed with those who would cry wolf, this Court should not remain unsuspecting about the grave consequences which will surely attend the ruling of the Court of Appeals: An enterprise carefully nurtured since its infancy with Congressional succor, and just now achieving its maturity, will cease to be in any form remotely approaching its historical persona. The Amici Curiae have been and hope to remain a part of that enterprise.

Pursuant to Rule 36.2 of the Rules of this Court, and with the written consent of the parties, this Brief is filed jointly on behalf of four Trust Funds: The Southern California Pipe Trades Trust Funds ("Pipe Trust"), The Southern California IBEW-NECA Trust Funds ("IBEW-NECA Trust"), the Airconditioning and Refrigeration Industry Trust Funds ("Airconditioning Trust"), and The Southern California Floor Covering Trust Funds ("Floor Covering Trust"), hereinafter sometimes referred to collectively as the "Trust Funds." By an Order entered October 1, 1984, this Court previously granted, *inter alia,* the Motion of these Amici Curiae for leave to file a brief in support of granting a petition for a writ of certiorari in the instant matter. The petition was granted by an Order entered on the same date.

Each of these Amici Curiae Trust Funds is situated in California and was created as a result of collective bargaining on a multiemployer basis between labor and management. Thus, for example, the Pipe Trust was created in about 1957 as a result of collective bargaining between the Southern California Pipe Trades District Council No. 16 of the United Association for and on be-

half of its affiliated local unions and the precessor multiemployer association to the Plumbing & Piping Industry Council. The IBEW-NECA Trust, as another example, was created in about 1965 as a result of collective bargaining between Local Union No. 11 International Brotherhood of Electrical Workers, AFL-CIO, and the Los Angeles County Chapter, National Electrical Contractors Association. Each of these Trust Funds, under separate trust indentures, provides both health and welfare benefits and pension benefits to tens of thousands of eligible participants. Each of the Trust Funds is also an "employee benefit plan," within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1002(3), and is, therefore, regulated by ERISA.

In addition to being regulated by ERISA, each of these Trust Funds is a so-called "Taft-Hartley" trust fund, meaning that each was created under the aegis of Section 302(c)(5) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(5). Section 302(c)(5), among other things, requires and has always required, that "employees and employers [be] equally represented in the administration" of Taft-Hartley pension and health and welfare funds. *NLRB v. Amax Coal Co.,* 453 U.S. 322, 329 (1981). Pursuant to this statutory mandate, the labor organizations and employers who created the instant Trusts have historically appointed their respective representatives to serve as trustees on these Trusts.

There are, and have been, 14 such Trustee representatives on the Pipe Trust, 14 on the IBEW-NECA Trust (pension), 6 on the Airconditioning Trust, and 6 on the Floor Covering Trust. Each of these Trustees is a fidu-

ciary within the meaning of Section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A). These Trustee representatives are not professionals, in the sense of receiving compensation for serving in the capacity of Trustee or even in the sense of devoting a full-time effort to the position of Trustee. On the contrary, almost all Trustees are employed full-time elsewhere, either by a participating labor organization or by a contributing employer. Accordingly, their service to the respective Trust Funds as Trustee is on a volunteer basis and arises out of their personal commitment to better the industry. The position of Trustee, is, by its nature, a part-time position, carried out in addition to duties and responsibilities elsewhere. While the position is part-time, the Trustees nonetheless carve out of their working life an enormous amount of time and energy to devote to this volunteer effort. Thus, each Trustee devotes in excess of 40 hours per month to the affairs of the Trust Funds, preparing for and attending meetings of the Trustees as a whole, as well as various committee meetings such as administrative, delinquency, appeals, investment (or finance), and building committees.

The Court of Appeals held that, under ERISA, a fiducary is personally liable for punitive damages and extra-contractual compensatory relief in actions brought by plan participants arising out of claims for benefits. These Amici Curiae are vitally interested in the outcome of this matter, since, under the direction of the Trustees, the Trust Funds annually handle hundreds of thousands of claims for benefits by participants and their dependents. During the 1983 calendar year, the Pipe Trust received *259,328* health and welfare claims and *339* pension applications; the Airconditioning Trust received *45,844* health and welfare claims and *35* pension applications; and the Floor Covering Trust received *8,751* health and welfare claims and *45* pension applications. During the 1983-4 fiscal year, the IBEW-NECA Trust received *141,909* health and welfare claims and *304* pension applications. Therefore, during a 12-month period, these four Trust Funds alone processed a total of 455,832 health and welfare claims and received 723 pension applications. Not all of these applicants and claimants, of course, are happy with the manner in which their claim or application is processed. There can be no doubt that the promise of punitive damages and extra-contractual compensatory relief held out by the Court below will inspire or induce a greater proportion of these unhappy claimants to seek judicial relief, most likely in federal court. [illegible]y one-tenth of one percent of these claims give ris[illegible] litigation, the courts will be flooded with over 45[illegible]its per year with respect to these four Trust Funds alone. Moreover, the personal assets of volunteer trustees will be exposed many times over. This is not by any means an idle fear: Following on the heels of the publication of the Court of Appeals opinion, the Pipe Trust was served with a summons and complaint in a case encaptioned *Louis Moot v. Retirement Fund Trust, etc., et al.*, CIV No. 843411 HLH (C.D. Cal.) in which 13 of the Pipe Trust's Trustees are named as individual defendants. The plaintiff, who alleges that he was improperly denied certain benefits, seeks damages for "physical and mental pain and suffering" in the sum of $125,000 and punitive damages "in a sum equal to 25% of the net worth of each defendant." The Amici Curiae, therefore, have a plain and immediate interest in the outcome of this case.

They are not alone. According to a recent report by the Comptroller General, there are 1,924 multiemployer trusts nationwide which have a minimum of 100 participants. In total, there are almost 8½ million participants in these 1,924 trusts. Comptroller General of the United States, Report to the Congress, GAO/HRD-84-1, at 8(1984). Assuming the claims experience of these trusts is not dissimilar to that of the Amici Curiae, the federal courts nationwide will likely enjoy an annual influx of thousands of benefit claims cases if the opinion of the Ninth Circuit remains the law. Even if a plaintiff has no genuine expectation of recovering a bonanza in punitive relief, a well-pleaded prayer for exemplary damages is an effective form of "graymail" to exact a settlement in an otherwise dubious claim.

SUMMARY OF ARGUMENT

The Court of Appeals, in *Russell v. Massachusetts Mutual Life Insurance Company,* 722 F.2d 482 (9th Cir. 1983) held that individual fiduciaries are personally liable to plan participants for punitive and extra-contractual compensatory damages under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq., in a case arising out of the untimely disposition of a benefit claim. The Court of Appeals found this timeless requirement in the provisions of Section 503 of ERISA, 29 U.S.C. Section 1133, and, in particular, in the regulation promulgated thereunder by the Secretary of Labor at 29 CFR Section 2560.503-1(h). This regulation, as the Court of Appeals notes, requires that benefit decisions be made "promptly," but in any event no later than 120

days from the "receipt of a request for review." *Id.* at 489. Failure to meet this time deadline, so the Court held, is a breach of fiduciary duty and exposes individual fiduciaries to the spectre of potentially enormous personal liability. The Court reached this conclusion notwithstanding the fact that the very same regulations issued by the Secretary of Labor provide that if a benefit decision is not rendered within the time required, "the claim shall be deemed denied." 29 CFR § 2560.503-1(h)(4). This is the only remedy the Secretary of Labor contemplated for untimely action upon a benefit claim, and was undoubtedly drafted so as to permit participants to avoid a contention that they failed to exhaust their administrative remedies in the event they bring suit after the passage of 120 days. *Amato v. Bernard,* 618 F.2d 559 (9th Cir. 1980); *Scheider v. United States Steel Corp.,* 486 F.Supp. 211 (W.D. Pa 1980).

Amici Curiae contend that in reaching its decision, the Court of Appeals failed to take into account the requirements of Section 302(c)(5) of the Labor-Management Relations Act and the express Congressional policy favoring multiemployers trusts. *NLRB v. Amax Coal Co.,* 453 U.S. at 338 n. 22. Moreover, by implying new remedies into a comprehensive statutory scheme, the Court of Appeals ignored the disparate impact its ruling would have among the several states, despite the clear Congressional purpose of achieving uniformity in the regulation of Taft-Hartley Trust Funds and contrary to prior rulings of this Court in analogous circumstances.

ARGUMENT

I.

The Court of Appeals' holding is inconsistent with the Federal Regulatory Scheme governing Multiemployer, Taft-Hartley Trust Funds.

There is no mention of Section 302(c)(5) of the Labor-Management Relations Act in the opinion of the Court of Appeals. Similarly, there is no mention of multiemployer trust funds. Yet, it seems clear that the ruling of the Court of Appeals applies to all persons regulated by ERISA, including the fiduciary-trustees of multiemployer Taft-Hartley funds, such as these Amici Curiae.

The Court of Appeals' failure to consider the relationship of Section 302(c)(5) to ERISA led that Court to embrace certain plainly erroneous premises. Moreover, these fallacious premises served as the underpinnings for its ultimate conclusion which, it is urged, betrays those faulty premises. For example, the Court of Appeals noted that "ERISA was intended to serve as a substitute for various existing state protective laws and regulations . . . It would be anomalous if Congress eliminated the protections offered by state law without providing comparable federal protections." *Russell v. Massachusetts Mutual*, 722 F.2d at 488.

However, it is clear that multiemployer Taft-Hartley trust funds were regulated by federal law, to the exclusion of state law, long prior to the passage of ERISA. Moreover, this regulation by federal laws other than ERISA has not been supplanted by ERISA. On the contrary, it continues to date and must, therefore, be reconciled with ERISA.

In a pre-ERISA suit seeking benefits from a Taft-Hartley trust fund, the Ninth Circuit itself held that state

laws pertaining to commercial insurance contracts are "not consistent with the federal policy of treating parties to collective bargaining contracts as parties of equal strength." *Rehmer v. Smith*, 555 F.2d 1362, 1369 (9th Cir. 1976).

Some thirteen years ago, this Court observed that under Section 301 of the Labor-Management Relations Act, 29 U.S.C. Section 185, retirees have a cause of action in the context of a Taft-Hartley Trust Fund for breach of the obligation to pay pension benefits. *Chemical Workers Local 1 v. Pittsburg Plate Glass Co.*, 404 U.S. 157, at 176-77 n. 17. It has also been held that punitive damages are not available under Section 301. *Williams v. Pacific Marine Association*, 421 F.2d 1287 (9th Cir. 1970). Therefore, contrary to the pronouncement of the Court of Appeals, the protections afforded participants in Taft-Hartley trust funds prior to ERISA were offered by federal law, not state law. These protections did not encompass punitive relief. Accordingly, when Congress enacted ERISA, it did not supplant state law to the disadvantage of participants in Taft-Hartley Funds. As to these funds, ERISA did no more than augment existing federal regulation.

In addition, this Court and the Ninth Circuit have both stated that ERISA did not supplant Section 302(c)(5). *UMW Health & Retirement Funds v. Robinson*, 455 U.S. 562, 575 (1982); *Hurn v. Retirement Fund Trust*, 803 F.2d 386, 391 (9th Cir. 1983). As the Court in *Hurn* put it, "ERISA was not to affect any federal laws not specifically mentioned." *Id.*

In view of this on-going federal regulation of multiemployer trust funds, and the solicitious attitude of Con-

gress towards these funds, it is peculiar that the Court of Appeals should adopt a rule at this late date which may ultimately lead to the demise of such funds. The imposition of punitive damages upon individual trustees of these funds is, it is submitted, plainly at odds with Section 301 and Section 302(c)(5) and the decisions of this Court thereunder. This conflict created by the decision of the Court of Appeals is exacerbated by the Court's discussion of the duties imposed by ERISA regarding the processing of benefit claims. The Court notes that these duties are in part identical to standards imposed upon labor organizations under *Vaca v. Sipes,* 386 U.S. 171 (1967) and its progeny. Yet this court has unequivocally held that punitive damages are unavailable in breach of fair representation cases. *Electrical Workers v. Foust,* 442 U.S. 60 (1979). It is difficult to imagine that Congress intended individual fiducaries to process claims with the same or similar standard of care obtaining in fair representation cases, and at the same time intended that disgruntled benefit claimants could secure punitive relief against individual Taft-Hartley trustees. Therefore, these Amici Curiae urge the Court to reconcile this conflict created by the Court of Appeals.

II

Exposing individual fiduciaries to punitive damages in benefit claims cases will jeopardize the entire field of trust funds, since such damages are uninsurable in many jurisdictions.

ERISA contains an express statutory provision governing suits by participants arising out of claims for benefits [ERISA Section 502(a)(1)(B), 29 U.S.C. Section 1132(A)(1)(B)]. Despite this express statutory scheme, the Court of Appeals held that a participant may elect to characterize a denial of benefits as a breach of fiduciary duty. As such, so the Court of Appeals held, the participant may sue under ERISA Section 502(a)(2), 29 U.S.C. Section 1132(a)(2) and obtain for his or her own account the "remedial relief" against fiduciaries referred to in ERISA Section 409, 29 U.S.C. Section 1109. The Court of Appeals further concluded that this "remedial relief" encompassed both compensatory damages (such as damages for mental and emotional distress) and punitive damages. The Court of Appeals reached this conclusion notwithstanding the possibility that a punitive award could impair the stability of Taft-Hartley funds, cf. *Electrical Workers v. Foust,* 442 U.S. at 705, and notwithstanding the express Congressional policy of favoring multiemployer trusts. *NLRB v. Amax Coal Co.,* 453 U.S. at 338 n. 22.

In finding that the "remedial relief" available to benefit claimants encompassed compensatory damages, the Court of Appeals noted that such damages were recoverable against the fiduciary personally, and not as against the benefit plan itself. *Russell v. Massachusetts Mutual,* 722 F.2d at 490, n. 8. Of course, in this case, the only fiduciary sued was Massachusetts Mutual Life Insurance Company, as distinguished from the individual members of the company's disability committee. Accordingly, the only "personal" liability which might attach in the instant case will be borne by an entity, as distinguished from any individual. Nevertheless, the Court of Appeals' rationale applies equally to individuals, such as the Trustees of these trust funds, where they occupy fiduciary positions and are named defendants. Apparently, in the

belief that it was softening the blow behind its holding, the Court of Appeals observed that "ERISA does allow for certain forms of fiduciary indemnification under Section 1110." *Id.*

Section 410 of ERISA, 29 U.S.C. Section 1110, however, does ***not*** in fact provide for "fiduciary indemnification" in the traditional sense of the phrase. On the contrary, ERISA made unlawful exculpatory clauses historically employed in trust indentures, designed to insulate trustees from personal liability. Thus, Section 410 expressly provides, in relevant part, that "any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [Part 4 of ERISA, entitled "Fiduciary Responsibility"] shall be void as against public policy." Section 410 does go on to provide that a plan may purchase insurance for itself or for its fiduciaries, *so long as* such insurance "permits recourse by the insurer against the fiduciary in case of a breach of a fiduciary obligation by such fiduciary." In addition, under Section 410, fiduciaries are permitted to buy their own insurance, or employers or unions are permitted to buy insurance for the fiduciary. In short, pursuant to Section 410, a fiduciary is permitted to obtain liability insurance, so long as someone other than the plan pays the premium. Insurance *may* be available to protect an individual trustee against claims by participants for compensatory damages. However, it will be noted that the Court of Appeals did not drop any such palliative footnote when it concluded that individual fiduciaries were also exposed to punitive damages in benefit claims cases. This is so because, at least in the State of California where the instant case arose, an insurance carrier is barred by

both statutory and decisional law from providing insurance against punitive damages.

Thus, California Civil Code § 1668 provides as follows:

"§ 1668. *Contracts contrary to policy of law.*

> CERTAIN CONTRACTS UNLAWFUL. All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or wilful injury to the person or property of another, or violation of law, whether wilful or negligent, are against the policy of law."

§ 533 of the California Insurance Code similarly provides as follows:

§ 533. *Wilful act of insured; negligence.*

> An insurer is not liable for a loss caused by the wilful act of the insured; but he is not exonerated by the negligence of the insured, or the insured's agent or others."

The California courts have concluded that these two code sections prevent an individual from insuring against punitive damages. *City Products Corp. v. Globe Indemnity Co.,* 88 Cal.App.3d 31 (1979); *Ford Motor Co. v. Home Insurance Co.,* 116 Cal.App.3d 374 (1981); *Peterson v. Superior Court,* 31 Cal.App.3d 147 (1982). Moreover, even if a policy of insurance by its terms expressly includes coverage for punitive damages, an insurance carrier is still not liable to indemify an insured against a judgment for punitive damages. Thus, in the *City Products* case, for example, the policy in dispute covered "*all sums* the insured shall become legally obligated to pay as damages." [Emphasis supplied] *Id.* at 33. Notwithstanding the

breadth of coverage contained in the contract of insurance, the court in *City Products* reasoned as follows:

> "The policy considerations in a state where . . . punitive damages are awarded for punishment and deterrence, would seem to require that the damages rest ultimately as well as nominally on the party actually responsible for the wrong. If that person were permitted to shift the burden to an insurance company, punitive damages would serve no useful purpose. Such damages do not compensate the plaintiff for his injury, as compensatory damages already have made the plaintiff whole."

City Products, 88 Cal.App.3d 31, 39, *quoting Northwestern National Casualty Co.,* 307 F.2d 432 (5th Cir. 1962).

Accordingly, in California, punitive damages imposed under the standard enunciated by the Court of Appeals will rest ultimately as well as nominally on the individual Taft-Hartley trustees who have volunteered their time for the betterment of the industry. The *in terrorem* effect of being exposed to such personal financial jeopardy, in the face of ultimate responsibility for processing hundreds of thousands of claims, will deter all but the most doughty — or the most foolhardy — from serving a trusteeship.

III

A court should not imply a Congressional intent to permit the recovery of punitive damages, where such relief will impact disparately among the several states.

While California will leave Taft-Hartley trustees personally exposed to punitive damages, in other jurisdictions individuals fiduciaries will not function under such a spectre. Thus, at least 14 states have concluded that an individual may insure against punitive damages:

(1) Arizona, *Price v. Hartford Accident & Indemnity Co.,* 108 Ariz. 485, 502 P.2d 522 (1972); (2) Arkansas, *California Union Ins. Co. v. Arkansas Louisiana Gas Co.,* 264 Ark. 449, 572 S.W.2d 393 (1978); (3) Georgia, *Greenwood Cemetery, Inc. v. Travelers Indem. Co.,* 238 Ga. 313, 232 S.E.2d 910 (1977); (4) Idaho, *Abbie Uriquen Oldsmobile Buick, Inc. v. United States Fire Ins. Co.,* 95 Idaho 501, 511 P.2d 783 (1973); (5) Iowa, *Cedar Rapids v. Northwestern Nat. Ins. Co.,* 304 N.W.2d 228 (1981); (6) Kentucky, *Continental Ins. Co. v. Hancock,* 507 S.W.2d 146 (1973); (7) Louisiana, *Fagot v. Ciravola,* 445 F.Supp. 342 (ED La 1978); (8) Maryland, *First National Bank v. Fidelity & Deposit Co.,* 283 Md. 228, 389 A.2d 359 (1978); (9) Mississippi, *Anthony v. Frith,* 394 S.2d 867 (1981); (10) Oregon, *Harrell v. Travelers Indemn. Co.,* 279 Or. 199, 567 P.2d 1013 (1977); (11) Tennessee, *Lazenby v. Universal Underwriters Ins. Co.,* 214 Tenn. 639, 383 S.W.2d 1 (1964); (12) Texas, *Ridgway v. Gulf Life Ins. Co.,* 578 F.2d 1026 (5th Cir. 1978); (13) Vermont, *State v. Glens Falls Ins. Co.,* 137 Vt. 313, 404 A.2d 101 (1979); (14) West Virginia, *Hensley v. Erie Ins. Co.,* 283 S.E.2d 227 (1981).

On the other hand, and in addition to California, at least 12 states have concluded that liability insurance coverage for an award of punitive damages is void as against public policy: (1) Colorado, *Universal Indem. Ins. Co. v. Tenery,* 96 Colo. 10, 39 P.2d 776 (1934); (2) Connecticut, *American Ins. Co. v. Saulnier,* 242 F.Supp. 257 (D.C. Conn. 1965); (3) Florida, *Dorsey v. Honda Motor Co.,* 655 F.2d 650 (5th Cir. 1981); (4) Illinois, *Beaver v. Country Mutual Ins. Co.,* 95 Ill.App.3d 1122, 420 N.E.2d 1058 (1981); (5) Indiana, *Grant v. North River Ins. Co.,* 453 F.Supp. 1361 (N.D. Ind. 1978); (6) Kansas, *American*

Surety Co. v. Gold, 375 F.2d 523 (10th Cir 1966); (7) Minnesota, *Wojciak v. Northern Package Corp.,* 310 N.W.2d 675 (1981); (8) Missouri, *Crull v. Gleb,* 382 S.W.2d 17 (1964); (9) New Jersey, *Variety Farms, Inc. v. New Jersey Mfrs. Ins. Co.,* 172 N.J.Super 10, 410 A.2d 696 (1980); (10) New York, *Parker v. Agricultural Ins. Co.,* 109 Misc.2d 678, 440 N.Y.S.2d 964 (1981); (11) Pennsylvania, *Esmond v. Liscio,* 209 Pa. Super. 200, 224 A.2d 793 (1966); (12) Virginia, *Northwestern Natl. Casualty Co. v. McNulty,* 307 F.2d 432 (5th Cir. 1962).

Based on the foregoing, it is clear that the rule adopted by the Court of Appeals, were it to be embraced by other Circuits (which it has not), would fall unevenly upon individual fiduciaries, depending on the fortuity of which state law governed the terms of any contract of insurance. The Court of Appeals ruling will even have a disparate impact within the Ninth Circuit, for it will be noted from the foregoing that the states of Arizona, Idaho and Oregon each permit insurance against punitive damages, whereas California does not.

It may be urged that the argument herein cuts too far, for if adopted it would preclude Congress from ever enacting a statute calling for punitive relief because of the disparate impact such a statute may have among the several states. However, such a broad proposition is not advocated herein. Rather, because of the disparate impact among the several states, it should not lightly be presumed that Congress intended punitive relief be available, particularly where, as in the instant case, there is scanty evidence of any such Congressional intention.

IV

The Judiciary should not fashion new remedies in the face of a comprehensive legislative scheme.

ERISA describes a comprehensive and elaborate scheme for enforcement. See, e.g., ERISA Section 501, 502(a)(1)(A),(a)(4), and (c), and 502 (g)(1), 29 U.S.C. §§ 1131, 1132 (a)(1)(A), (a)(4) and (c), and 1132(g)(1). However, this elaborate scheme nowhere mentions punitive damages.

In an analogous context, this Court recently had occasion to pass upon the propriety of implying an additional remedy into a comprehensive legislative scheme. *Northwest Airlines v. Transport Workers Union,* 451 U.S. 77 (1981); see also, *Texas Industries v. Radcliffe,* 451 U.S. 630 (1981). In *Northwest Airlines,* the issue was whether the Equal Pay Act or Title VII of the 1964 Civil Rights Act would permit a defendant to seek indemnification or contribution from a third party. In holding that these statutes would not permit such a remedy, this Court opined as follows:

> "The presumption that a remedy was deliberately omitted from a statute is strongest when Congress has enacted a comprehensive legislative scheme including an integrated system of procedures for enforcement. Both the Equal Pay Act and Title VII of the Civil Rights Act of 1964 are such statutes. The judiciary may not, in the face of such comprehensive legislative schemes, fashion new remedies that might upset carefully considered legislative programs."
> *Id.,* 451 U.S. at 97.

It is hard to imagine a more comprehensive legislative scheme than ERISA. When the requirements of § 302(c)(5) are added to those of ERISA, it becomes even clearer that judicially crafted remedies are unwarranted.

CONCLUSION

Based on the foregoing, together with such arguments as may be advanced by the Petitioners herein, the Amici Curiae respectfully urge this Court to reverse the Court of Appeals and conclude that neither punitive damages nor extra-contractual compensatory damages are available in the circumstances of this case.

Respectfully submitted,

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